COURT NO. 2

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No.6837 (S/S) of 2001

(Old Case No.26436 of 1992)

Jai Narain Singh son of Prasidh Narain Singh resident of Village Sindura, Post Office Dildarnagar, District Ghazipur.

.....Petitioner

Versus

1. Chief of Army Staff.
2. Officer Commanding Troops, Head Quarter 36, Infantry Division, C/o 56A A.P.O.

.....Respondents

Sir B.P.S. Mer, learned counsel for the petitioner.
Ms. Anjali Bhargava, learned counsel for the respondents.

Dated: 27.11.2007

Hon'ble P.C. Verma, J.

By means of this writ petition, the petitioner has prayed for quashing the judgment and order dated 28.02.1992 passed by the respondent no.1/Chief of Army Staff and also prayed for commanding the respondents to promote him in the higher rank.

2. Brief facts of the case are that the petitioner was enrolled in the Army on 13th December 1962 as Junior Commissioned Officer (J.C.O.) and was promoted upto the post of Subedar and at the last of his service, he was serving with Headquarters 36 Infantry Division, G.S. (Intelligence) and reported S.T.B., Department Bengal Engineers Group (B.E.G.) Centre Roorkee for pension. At the end of year 1989, petitioner's promotion for the post of Subedar Major was due and till August 1989 he was not informed by Bengal Engineer Group, Roorkee

regarding outcome of D.P., C.I.S. result, then he requested from the present Officer Commanding, G.S.O.1 (Intelligence) and on the request of petitioner, he sent a letter to Bengal Engineers Group Records to send D.P.C.'s result of the petitioner to this Headquarters. Bengal Engineers Group Records Roorkee had informed to Headquarters 36 Infantry Division, vide letter dated 23rd September 1989 that Junior Commissioned Officer (Petitioner) is not meeting with A.C.R. criteria as laid down in Army Headquarters Letter No.92930/A6/P52 (C) dated 18th December 1985.

3. On 5th October, 1989, the petitioner filed an appeal to set aside the A.C.R. for the period of 4th April 1987 to 31st December 1987 before General Officer Commanding in Chief Headquarters Southern Command Pune-1. The appeal of the petitioner filed before the General Officer Commanding in Chief was turned down stating that Junior Commissioned Officer (Petitioner) should apply his request through Non-statutory/ Statutory media as per existing order on the subject.

4. On 5th November 1989, the petitioner filed a Non-Statutory complaint to the Officer Commanding Troops Headquarters 36 Infantry Division for onwards submission to competent authority to redress his A.C.R. for the year 1987 and the petitioner also made a request to give his promotion after setting aside the A.C.R. for the year 1987. In his complaint the petitioner also alleged that one Subedar Biswa Nath Singh got his promotion to the rank of Subedar Major w.e.f. March 1990.

5. On 15th March, 1990, the petitioner again made a Non-Statutory complaint to the respondent no.1 through respondent no.2. Under the Regulation, it has been stated that authorities will expeditiously decide the complaint but after a lapse of eleven month the petitioner could not get any response as such on 10th December, 1990 the petitioner filed a Statutory complaint to the respondent no.1 and put the matter before the respondent no.2 to send his complaint to respondent no.1 through proper channel. Even after the Statutory complaint, the respondent no.2 has not forwarded the same to respondent no. 1.

6. On 16.04.1991 the petitioner filed a writ petition before the High Court and the Court was pleased to direct the respondent no.2 to send the petitioner's Statutory complaint to respondent 1.

7. The petitioner received a letter dated 28th November 1991 from the Record Office, Bengal Engineering Group, whereby he was informed by the office that his complaint has now been forwarded to respondent no.1 for decision. Thereafter, the petitioner received a letter dated 21st March 1992 from the Record Office, Bengal Engineering Group informing the petitioner that his complaint has already been dismissed on 28th February 1992.

8. The petitioner sent a letter to the Record Office of the Bengal Engineering Group on 2nd April 1992 alleging that he has not been served with any letter from the Office informing him about the decision dated 28th February 1992 in his Statutory complaint. In reply to his

letter dated 2nd April 1992, the petitioner received a letter dated 16th April 1992 on 2nd May 1992 and with the letter he was also served with the order of respondent no.1.

9. It has further been averred in the writ petition that respondent no.1 has not sent any order to the petitioner and the letters which have been received by the petitioner are only information about the rejection of the petitioner's complaint. He has further averred that he has not able to know that on what ground his complaint has been rejected and the petitioner always discharged his duties and responsibilities to the entire satisfaction of his superiors. Moreover, there is no redline in his A.C.R. as such the A.C.R. for the year 1987 in liable to be corrected. He has further averred that due to illegal act of respondent no.2, the petitioner was retired from the service on 01.01.1991 without getting any benefit of promotion.

10. A counter affidavit has been filed on behalf of the respondents stating therein that the petitioner was posted to Headquarters 36, Infantry Division on 06 April, 1987 where he remained posted till he proceeded to Record Office, B.E.G., Roorkee on 7th December 1990 for transfer to pension establishment. The petitioner as per his seniority should have been considered for the rank of Subedar Major. Since he received no information form B.E.G. Records he requested his Officer Commanding, General Staff Officer Grade (intelligence) to write to B.E.G. Records and accordingly information was asked for B.E.G. Record, who informed that since the Junior Commissioned Officer was not meeting the Annual Confidential Report criteria, therefore he was not

considered for promotion to the rank of Subedar Major. The petitioner than filed an appeal before the General Officer Commanding-in-Chief, Southern Command which was turned down and he was advised to submit statutory/non-statutory complaint as per procedure in vogue. The petitioner submitted non-statutory complaint for setting aside his A.C.R. for the year 1997 in which he was given 'Average' grading (2 points) by the Initiating Officer and Reviewing Officer and also for his supersession to the rank of Subedar Major.

11. It has further been averred in the counter affidavit that after processing the case, the J.C.O. was interviewed by the Officer Commanding Troops, on 27th March, 1990. During his interview, the Officer Commanding Troops, apprised the J.C.O. of the comments of the Initiating Officer and Reviewing Officer. In case not satisfied with the comments of Initiating Officer and Reviewing Officer, the J.C.O. was advised to submit his complaint either for supersession for further promotion to the rank of Subedar Major or setting aside his A.C.R. for the year 1987. During the course of interview of J.C.O. (petitioner) in presence of the then Officiating General Staff Officer Grade-I (Intelligence) stated that he was satisfied with the comments of initiating Officer and Reviewing Officer and did not wish to pursue his case further. The case was then closed. Thereafter, the petitioner proceeded to the Record Officer, B.E.G. Roorkee on 07.12.1990 for transfer to pension establishment.

12. On 10.12.1990, the petitioner submitted the Statutory complaint to the Chief of the Army Staff

through proper channel. It was also intimated by the Engineering Branch Headquarters, General Command, Lucknow on 05.03.1992 that statutory complaints dated 10.12.1990 submitted by the petitioner was placed before the Chief of the Army Staff who rejected the same in the lack of Substance after considering the entire record.

13. From the above stated facts and circumstances, it is clear that no illegal and unwarranted act has been done by the respondents. Since the petitioner does not fulfill the requisite criteria as per Army Headquarters Letter dated 18.12.1985, as such the petitioner was rightly not considered for the post of Subedar Major. There is no substance in the writ petition and the impugned order does not suffer from any irregularity or impropriety, as such, no interference is called for.

14. The writ petition is devoid of merit and is accordingly dismissed. No order as to costs.

(P.C. Verma, J.)

27.11.2007
RBS